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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Consistency Certification for a Proposed Project in Sterling, New York; Notice of Appeal

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice of Appeal

SUMMARY: This announcement provides notice that the Department of Commerce (Department) has received a “Notice of Appeal” filed by Mark Smolinski (Appellant) requesting that the Secretary override an objection by the New York Department of State to a consistency certification for a proposed project in Sterling, New York.

ADDRESSES AND DATES: You may submit written comments concerning this appeal or requests for a public hearing to NOAA, Office of General Counsel, Oceans and Coasts Section, Attn. Gladys Miles, 1305 East-West Highway, Room 6111, Silver Spring, MD 20910, or via email to gcos.comments@noaa.gov. Comments or requests for a public hearing must be sent in writing postmarked or e-mailed no later than October 23, 2013.

SUPPLEMENTARY INFORMATION:

I. Notice of Appeal

On August 22, 2013, the Secretary of Commerce (Secretary) received a “Notice of Appeal” filed by Mark Smolinski, pursuant to the Coastal Zone Management Act of 1972 (CZMA), 16 U.S.C. §§ 1451 *et seq.*, and implementing regulations found at 15 C.F.R. Part 930, Subpart H. The appeal is taken from an objection by the New York Department of State to a consistency

certification for a U.S. Army Corps of Engineer permit needed for the installation of a solar panel array onto an existing dock located in Sterling, New York. The solar array would provide energy to a private residence.

Under the CZMA, the Secretary may override the Department of State's objection on grounds that the project is consistent with the objectives or purposes of the CZMA or otherwise necessary in the interest of national security. To make the determination that the proposed activity is "consistent with the objectives or purposes of the CZMA," the Department must find that: (1) the proposed activity furthers the national interest as articulated in sections 302 or 303 of the CZMA, in a significant or substantial manner; (2) the adverse effects of the proposed activity do not outweigh its contribution to the national interest, when those effects are considered separately or cumulatively; and (3) no reasonable alternative is available that would permit the activity to be conducted in a manner consistent with enforceable policies of the applicable coastal management program. 15 C.F.R. § 930.121. To make the determination that the proposed activity is "necessary in the interest of national security," the Secretary must find that a national defense or other national security interest would be significantly impaired if the activity is not permitted to go forward as proposed. 15 C.F.R. 930.122.

II. Request for Public and Federal Agency Comments

We encourage the public and interested federal agencies to participate in this appeal by submitting written comments and any relevant materials supporting those comments. All comments received are a part of the public record. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible.

III. Public Hearing Request

You may submit a request for a public hearing using one of the methods specified in the ADDRESSES AND DATES section of this notice. In your request, explain why you believe a public hearing would be beneficial. If we determine that a public hearing would aid the decisionmaker, a notice announcing the date, time, and location of the public hearing will be published in the Federal Register. The public and federal agency comment period will also be reopened for a ten-day period following the conclusion of the public hearing to allow for additional input.

IV. Public Availability of Appeal Documents

NOAA intends to provide access to publicly available materials and related documents comprising the appeal record on the following web site:

<http://coastalmanagement.noaa.gov/consistency/fcappealdecisions.html>; and during business hours, at the NOAA, Office of General Counsel in the location specified in the ADDRESSES AND DATES section of this notice.

[Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance.]

Dated: September 18, 2013.

Jeffrey S. Dillen
Acting Chief, Oceans & Coasts Section
NOAA Office of General Counsel

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